

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application by McLean's Mountain Wind Limited Partnership for an Order granting leave to construct a new transmission line and associated facilities.

APPLICANT'S REPLY TO BOARD STAFF AND INTERVENOR SUBMISSIONS

Delivered May 30, 2012

INTRODUCTION

1. McLean's Mountain Wind Limited Partnership (the "Applicant" or "McLean") has applied to the Board for leave to construct (the "Application") an electricity transmission line and related facilities (the "Transmission Facilities") that will be used to connect the McLean's Mountain Wind Farm (the "Wind Farm"), which is to be located south of the community of Little Current, in the Municipality of Northeastern Manitoulin and the Islands ("NEMI"), to the IESO-controlled grid.
2. The submissions that follow are in reply to submissions filed by Intervenor and Board Staff in response to McLean's Argument-in-Chief, filed on May 17, 2012.
3. In addition to Board Staff, the intervenors filing submissions were Manitoulin Coalition for Safe Energy Alternatives ("MCSEA") (on behalf of itself, Wikwemikong Elders Community Members and Youth, Bayniche Conservancy, Lake Superior Action-Research Conservation, Wind Concerns Ontario and Manitoulin Nature Club); and Canadian Pacific Railway Company ("CP"). MCSEA and CP are referred to collectively as the "Intervenor".
4. As Board Staff have also restated in their submissions, McLean notes once again that the Board's mandate with respect to applications made under section 92 *Ontario Energy Board Act, 1998* (the "Act") is limited by subsection 96(2) of the Act. Specifically, when determining whether a proposed work is in the public interest, the Board's jurisdiction is limited to consideration of the following: (i) the interests of consumers with respect to prices and the reliability and quality of electricity service; and (ii) where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.
5. McLean repeats and relies upon the submissions made in its Argument-in-Chief, and submits that it has satisfied the Board's public interest test, as well as Chapter 4 of the Board's Filing Requirements for Transmission and Distribution Applications (Filing Requirements for Electricity Transmission Projects under Section 92 of the OEB Act, referred to here as the "Filing Requirements"), in its Application and throughout this Proceeding. It has organized this submission according to the headings used by Board

Staff, and has addressed certain of the MCSEA submissions later in this submission, in the section titled "Other Matters".

Land Matters

6. In its submissions, Board Staff acknowledge that other than the section of the proposed Transmission Facilities to be located on Goat Island, the Applicant has secured the necessary land rights through public road allowances or other agreements with private land owners. Board Staff submit that the forms of agreements provided by the Applicant with respect to the above land rights, are acceptable.
7. As indicated in the Applicant's Argument-in-chief, and as acknowledged by CP in paragraph 3 of its closing submissions, negotiations between the Applicant and CP for appropriate land rights in respect of the Transmission Facilities to be located on Goat Island are continuing and that the lease agreement with CP is being finalized and it is expected that it will be signed before the end of June, 2012.
8. Board Staff submit that approval of the McLean's Application for Leave to Construct "be subject to the applicant and CP reaching agreement" for the section of the route of the proposed Transmission Facilities to be located on Goat Island. CP makes a similar request in paragraph 3 of its closing submissions.
9. In their concluding submission Board Staff submit that the Application should be granted, subject to the proposed draft conditions of approval attached as Appendix A to their submissions (the "Conditions of Approval"). McLean notes that the requirement for an agreement being reached with CP with regard to the section of the proposed route on Goat Island is not listed in the Conditions of Approval. Condition 1.7 generally states that "*The Applicants shall obtain and comply with all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the Project, and shall provide copies of all such written approvals, permits, licences and certificates upon the Board's request.*" [emphasis added]
10. McLean respectfully submits that Board Staff's and CP's suggested prerequisite for approval of McLean's Application repeated in paragraph 8 above differs from condition 1.7 in Board Staff's Conditions of Approval. Condition 1.7 states, in general terms, that

necessary land rights must be secured by the Applicant. McLean does not object to that condition, and submits that it is consistent with section 4.3.6 of the Board's Filing Requirements. In section 4.3.6 of the Filing Requirements, the Board requires that an application under section 92 of the Act include documentation of land requirements, land rights, and the land acquisition process. For example, the Board requires an applicant's plan for acquiring new easements and the progress achieved to date with affected landowners. McLean has provided this information through the interrogatory process and has provided the Board with an update in its Argument-in-Chief.

11. McLean respectfully submits that approval of its Application for Leave to Construct should not be subject to McLean and CP reaching an agreement specifically, but rather that it should be conditional on McLean securing the necessary land rights for the proposed route of the Transmission Facilities, as set out in condition 1.7 of the Conditions of Approval.
12. In its submission filed on May 11, 2012, MCSEA writes: "McLean has stated on the record of this proceeding that it will not expropriate property for this project." This statement is incorrect. At no time in this proceeding has McLean stated that it will not expropriate property for the Transmission Facilities. In McLean's reply submission on confidentiality filed on February 24, 2011 (at paragraph 33) and in McLean's response to MCSEA, LSARC, Bayniche Conservancy, Wikwemikong Elders, Community and Youth, and Manitoulin Nature Club Interrogatory No. 38, dated March 30, 2012, McLean's submitted that "MCSEA has also requested that 'full details' be provided on the public record of 'any lands acquired by, or planned to be acquired by, expropriation under the Electricity Act or any other legislation'. In fact, the contractual arrangements referred to in the table that is the subject of the confidentiality request were not arrived at through expropriation. However, McLean's submits that the manner in which the land rights are acquired is not relevant to the current proceeding, nor is that a focus of the Filing Requirements, notwithstanding that the forms of agreements are before the Board for approval. McLean's will need land rights in order to construct the proposed transmission line, and the OEB Act addresses circumstances in which necessary land rights cannot be arranged through negotiation. Any such negotiations with land owners are highly commercially sensitive and are not within the scope of this proceeding."

13. While McLean does not anticipate needing to seek leave to expropriate land for the Transmission Facilities, it has not said that it will not do so. McLean reiterates that the OEB Act addresses circumstances in which necessary land rights cannot be arranged through negotiation, and that the manner in which the land rights are acquired is not relevant to the current proceeding. McLean respectfully requests that the Board confirm that leave to construct is being made conditional only upon McLean securing the necessary land rights and not on an agreement between McLean and any particular land owner.

Impact Assessments

14. McLean's submitted as part of its Application a system impact assessment ("SIA") report dated October 27, 2010 and addendum ("Amended SIA") report dated March 15, 2011 from the Independent Electricity System Operator ("IESO"). In its response to Board Staff interrogatory no. 12, McLean's confirmed that it will comply with the IESO requirements listed in both the SIA and Amended SIA.
15. McLean's also provided copies of the Hydro One Customer Impact Assessment ("CIA") report dated October 22, 2010 and addendum ("Amended CIA") report dated March 16, 2011 as part of its Application. The CIA and Amended CIA indicated that the addition of the McLean's Mountain Wind Farm (the "Wind Farm") increased the short circuit level at the Martindale 44 kV bus. McLean's indicated in its response to Board Staff interrogatory no. 13 that it will take necessary mitigation measures to remove the impact on customers on the Martindale 44 kV bus in order to fulfill the Hydro One requirements.
16. Board Staff have submitted that compliance with the requirements of the SIA, as amended, and CIA, as amended, should be conditions of approval (see draft conditions 1.4 and 1.5).
17. McLean confirms once again that it will take the necessary actions to fulfill requirements set out in both the SIA and CIA, as amended.
18. McLean notes that the manufacturer of the turbines to be used in the Wind Farm has recently proposed certain changes to internal, electrical components of the turbines. McLean has advised the IESO and Hydro One of these changes. McLean does not

anticipate that the changes will affect the proposed Transmission Facilities in any material way, nor do they affect the route of the transmission line. McLean is awaiting notification from the IESO and Hydro One as to when revised SIA and CIA reports will be issued. When these reports are issued, and in the event that McLean intends to proceed with the revised turbines, McLean will file copies of the updated SIA and CIA reports with the Board. McLean understands that compliance with any updated reports would fall within conditions 1.4 and 1.5 of the Draft Conditions of Approval provided by Board Staff.

Environmental Matters

19. As indicated in Board Staff submissions, the Board does not play a role in the environmental assessment for a leave to construct application, other than ensuring that the requirements are fulfilled at some point in time.
20. McLean respectfully submits that the Renewable Environment Assessment and other necessary environmental approvals have either been obtained or are in the process of being obtained. McLean does not object to having the REA approval as a Condition of Approval for the Application, as suggested by Board Staff in their submissions.

Conditions of Approval

21. As stated in McLean's Argument-in-chief, McLean would anticipate that the Board would append a list of Conditions of Approval to its Decision approving the Application.
22. McLean has reviewed the draft Conditions of Approval appended to Board Staff submissions. McLean respectfully submits that it does not object to the Conditions of Approval as drafted. McLean does request, however, as discussed above, that the Board confirm that leave to construct is being made conditional only upon McLean securing the necessary land rights and not on an agreement between McLean and any particular land owner.

Other Matters

23. McLean submits that the Board Staff and CP submissions have addressed matters that are within the scope of this proceeding. MCSEA has made certain submissions on two

other matters – the Notice of Application, and the nature of the partnership that comprises the Applicant – that have previously been addressed by the Board, and in respect of which the Board has concluded that McLean has complied with the Board's requirements in respect of notice; and that the MCSEA allegations with respect to the McLean partnership are beyond the scope of this proceeding. McLean offers the following brief comments on these matters:

- **Notice of Application**

24. MCSEA has submitted that public participation in the Application process has been impaired due to inadequate notice by the Applicant.
25. McLean's respectfully submits that the matters being raised by MCSEA in this regard simply repeat submissions made several months ago by MCSEA. Those submissions were answered by the Board in Procedural Order No. 1 ("PO#1"), issued on January 27, 2012. At page 2 of PO#1, the Board stated that despite concerns raised by some parties as to adequacy and accuracy of notice, McLean had served and published Notice as directed by the Board and that the Board would not order that the Notice be clarified or re-issued.
26. The Board also noted in PO#1 that on many occasions it has accepted intervention requests well after the deadline established in a notice, and would expect any interested parties to at least request intervenor status even if a deadline has been missed. For example, both Manitoulin Nature Club and North American Platform Against Windpower made late requests for intervenor status, and those requests were granted in Procedural Order No. 2.
27. In a letter dated January 31, 2012 McLean advised the Board of its unintentional omission of CP from the delivery of notice of this proceeding. McLean immediately corrected this omission following its discovery, and worked with the Board in establishing extended timelines to accommodate CP's participation in this proceeding. McLean has not at any time in the Application process opposed an intervention request on the basis that the party requesting intervenor missed the deadline set out in the notice.

28. McLean respectfully requests that the Board reject the MCSEA submissions in this regard.

- **Northland Power Inc. and Mnidoo Mnising Power LP**

29. In its submissions, MCSEA submits that the Board should be mindful with regard to the legitimacy of the Applicant.

30. McLean respectfully submits once again that the arrangement between Northland Power Inc. and Mnidoo Mnising Power, the limited partners of the Applicant, is beyond the scope of this proceeding. As with the MCSEA comments regarding notice of this proceeding, MCSEA is simply attempting to reargue matters that have previously been considered and disposed of by the Board. In its decision in Procedural Order No. 7, dated May 11, 2012, in which the Board determined that it would not admit the additional evidence that MCSEA proposed to file, the Board wrote:

“First, one of the main purposes of a leave to construct application is to determine whether the proponent is capable of building and operating the facilities in a manner that will ensure reliable service. The evidence in this case is that Northland Power will fulfil that role. Therefore, matters concerning the other partner are of limited relevance in this proceeding in any event. The Board finds there would be limited probative value from enquiry into these matters. In short, the issue appears to have little if any relevance to the Board’s statutory mandate in a leave to construct application.

Second, the allegations made by MCSEA are potentially relevant to the contractual arrangements between McLean’s and the Ontario Power Authority for the wind farm project. If the wind farm project does not proceed, either because of questions regarding the legitimacy of the contractual relationships governing the partnership or for any other reason, then the transmission line would not be built. Therefore, the *bona fides* of MMP and its authority to enter into the partnership need not be determined in this proceeding.”

31. In the Application, McLean has clearly explained its structure and the roles of its members with respect to the proposed Transmission Facilities. McLean submits that, as confirmed by the Board, the assertions made by MCSEA with respect to MMP are beyond the scope of this proceeding and should be rejected by the Board.

CONCLUSION

32. As stated by the Board in Procedural Order No.1, applicable legislation and Board practice, the scope of the Board’s mandate in a leave to construct proceeding is narrow. As confirmed by Board Staff submissions, the Applicant has demonstrated the need for

the Transmission Facilities, which need is consistent with the promotion of the use of renewable energy sources. The Applicant has also demonstrated that because the costs related to the construction and operation of the Transmission Facilities will be the responsibility of the Applicant, rate payers will not be adversely affected. The IESO and Hydro One, through the SIA and CIA, have demonstrated that the construction and operation of the Transmission Facilities are not anticipated to have an adverse impact on reliability or the quality of electricity service. The Applicant shall take the necessary actions to fulfill requirements set out in both the SIA and CIA, as amended.

33. For all the foregoing reasons, McLean respectfully submits that it has fulfilled the requirements under section 96(2) of the Act, and that the proposed Transmission Facilities are in the public interest. McLean therefore requests that the Board grant the relief requested in the Application, including granting leave to construct the Transmission Facilities and the approval of the forms of land-related agreements provided in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30TH DAY OF MAY, 2012

McLean's Mountain Wind Limited Partnership
By its Counsel
Borden Ladner Gervais LLP
Per:

Original Signed by James C. Sidlofsky

James C. Sidlofsky